

Advice has been requested whether a bank, a trustee of a trust treated as a charitable remainder unitrust, may invest the assets of such trust in common trust funds maintained by the bank without jeopardizing the exempt status of the charitable remainder unitrust or the donor's charitable contribution deduction.

A bank maintains common trust funds of the Internal Revenue Code of 1954 as described in section 584 (a) referred to as Fund M, N, O, and P, respectively. With limited exceptions, the types of participants in each of the funds are substantially the same. Approximately 91 percent of the Fund M units are owned by inter vivos revocable noncharitable trusts, 1.5 percent by unitrusts, and the remainder by guardianship or conservatorship accounts.

Funds N, O, and P are the investment vehicles for similar trust participants, except that a somewhat greater percentage of their units are owned by guardianship and conservatorship accounts and by testamentary trusts. All unitrusts presently administered by the bank are invested in Fund M. However, in its discretion, the other funds may be selected by the bank in its capacity as trustee, or it may invest in other assets if it so chooses.

Section 1.664-1 (a) (3) of the Income Tax Regulations provides, in part, that a trust is not a charitable remainder trust if the provisions of the trust include a provision that restricts the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

Accordingly, based upon the facts in the instant case, the investment by the bank of the assets of a trust treated as a charitable remainder unitrust in common trust funds maintained by the bank will not jeopardize either the exempt status of the charitable remainder unitrust or the donor's charitable contribution deduction.